

David J. Feldman, Esq.  
Nevada Bar No. 5947  
Rachel J. Holzer, Esq.  
Nevada Bar No. 11604  
THE FELDMAN FIRM  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Telephone: (702) 949-5096  
Facsimile: (702) 949-5097  
[dfeldman@feldmanattorneys.com](mailto:dfeldman@feldmanattorneys.com)  
[rholler@feldmanattorneys.com](mailto:rholler@feldmanattorneys.com)  
*Attorneys for Defendant*  
*Acuity A Mutual Insurance Company*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ESTEVAN ALVARADO-HERRERA, an  
individual

Plaintiff,

vs.

ACUITY A MUTUAL INSURANCE  
COMPANY; a Wisconsin corporation; and  
DOES I through XX, inclusive,

Defendants.

Case No.: 2:22-cv-00438-RFB-NJK

**DEFENDANT'S ANSWER TO  
COMPLAINT**

JURY TRIAL DEMANDED

Defendant Acuity A Mutual Insurance Company, (hereinafter, Defendant) by and through its attorney of record, David J. Feldman, Esq. and Rachel J. Holzer, Esq. of the Feldman Firm, hereby answers Plaintiff's Complaint as follows:

**GENERAL ALLEGATIONS**

1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant is without knowledge as to the averments in this paragraph.

2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits the averments in this paragraph.

3. Answering Paragraph 3 of Complaint, Defendant is without knowledge as to the averments in this paragraph.

1           4.       Answering Paragraph 4 of Plaintiff's Complaint, Defendant submits that the  
2       averments in this paragraph appear to relate to Plaintiff's anticipated future request to amend his  
3       complaint to include the names of any fictitious defendants and does not contain any allegations  
4       against the responding Defendant; notwithstanding, to the extent an answer is required, Defendant  
5       is without knowledge as to the averments in this paragraph.

6           5.       Answering Paragraph 5 of Plaintiff's Complaint, defendant denies the averments in this  
7       paragraph.

8                               **FACTUAL ALLEGATIONS**

9           6.       Answering Paragraph 6 of Plaintiff's Complaint, Defendant submits that the referenced  
10      insurance policy speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
11      seeks to alter, modify, or otherwise change its terms, conditions, or exclusions, Defendant denies  
12      the averments in this paragraph.

13          7.       Answering Paragraph 7 of Plaintiff's Complaint, Defendant submits that the referenced  
14      insurance policy speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
15      seeks to alter, modify, or otherwise change its terms, conditions, or exclusions, Defendant denies  
16      the averments in this paragraph.

17          8.       Answering Paragraph 8 of Plaintiff's Complaint, Defendant submits that the referenced  
18      insurance policy speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
19      seeks to alter, modify, or otherwise change its terms, conditions, or exclusions, Defendant denies  
20      the averments in this paragraph.

21          9.       Answering Paragraph 9 of Plaintiff's Complaint, Defendant is without knowledge as  
22      to the facts surrounding the accident, except for those contained in the traffic accident report and  
23      those relayed by Plaintiff to Defendant during the course of its investigation of Plaintiff's claim and  
24      pursuant to its overall investigation. Defendant denies this paragraph regarding legal conclusions  
25      asserted. Further, Defendant submits that Plaintiff's assertion regarding injuries and other damages  
26      is vague, ambiguous, subjective in nature, and subject to multiple interpretations. Defendant is  
27      therefore without knowledge as to this averment.

28          10.      Answering Paragraph 10 of Plaintiff's Complaint, Defendant submits that the

1 averments in this paragraph violate FRCP 8 and therefore do not require a response. To the extent  
2 a response is deemed necessary, Defendant submits that Plaintiff's assertion regarding injuries and  
3 general and special damages is vague, ambiguous, speculative, subjective in nature, and subject to  
4 multiple interpretations. Defendant is therefore without knowledge as to the averments in this  
5 paragraph.

6 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant is without knowledge  
7 as to what at all times material encompasses. Defendant admits Plaintiff had a policy with  
8 Defendant. The policy speaks for itself and is the best evidence as to its contents. To the extent  
9 Plaintiff seeks to alter, modify, and or change its terms, conditions, or exclusions, Defendant denies  
10 the averments in this paragraph.

11 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant is without knowledge  
12 as to what at all times material encompasses. The policy speaks for itself and is the best evidence  
13 as to its contents. To the extent Plaintiff seeks to alter, modify, and or change its terms, conditions,  
14 or exclusions, Defendant denies the averments in this paragraph.

15 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant submits that the  
16 referenced document speaks for itself and is the best evidence as to its contents. To the extent  
17 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
18 in this paragraph.

19 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant admits that Bruce Kide  
20 participated in the adjustment and properly engaged in acts of investigating Plaintiff's claim.  
21 Defendant admits Bruce Kides ordered a copy of the Traffic Accident Report. Defendant submits  
22 that the referenced document speaks for itself and is the best evidence as to its contents. To the  
23 extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the  
24 averments in this paragraph.

25 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant submits that the  
26 averments in this paragraph violate FRCP 8 and therefore do not require a response. To the extent  
27 a response is deemed necessary, Defendant submits that the referenced document speaks for itself  
28 and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or

otherwise change its contents, Defendant denies the averments in this paragraph.

16. Answering Paragraph 16 of Plaintiff's Compliant, Defendant submits that the referenced document speaks for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this paragraph. Further, Defendant denies the demand contained everything needed to perform a full and complete evaluation of Plaintiff's claim.

17. Answering Paragraph 17 of Plaintiff's Compliant, Defendant denies the averments in this paragraph.

18. Answering Paragraph 18 of Plaintiff's Compliant, Defendant admits it did not make an offer to settle but did offer to mediate in good faith. Defendant denies the remaining averments in this paragraph and further denies breaching any duty to Plaintiff, whether created by contract, statute, or common law..

PLAINTIFF'S TORT LAWSUIT

19. Answering Paragraph 19 of Plaintiff's Compliant, Defendant admits Plaintiff filed the referenced lawsuit and denies the remaining averments in this paragraph or is without knowledge as to same as they are so vaguely stated.

20. Answering Paragraph 20 of Plaintiff's Compliant, Defendant admits it intervened in the Tortfeasor Lawsuit. Defendant is without knowledge as to what "taking this affirmative step" encompasses and is therefore without knowledge as to the remaining averments in this paragraph.

21. Answering Paragraph 21 of Plaintiff's Compliant, Defendant admits the parties stipulated to permit Defendant to intervene. Defendant submits that the referenced stipulation speaks for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this paragraph.

22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant admits it filed its answer. The answer speaks for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this paragraph.

23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant admits it filed a

1 Demand for Jury Trial. This demand speaks for itself and is the best evidence as to its contents.  
2 To the extent Plaintiff seeks alter, modify, or otherwise change its contents, Defendant denies “all  
3 matters would expressly include ACUITY’s defenses asserted in response to Plaintiff’s allegations  
4 and its affirmative defenses pleaded within its Answer” as this would include legal issues which  
5 are not decided by a jury.

6 24. Answering Paragraph 24 of Plaintiff’s Complaint, Defendant submits that the  
7 averments in this paragraph violate NRCP 8 and thus do not require a response. To the extent a  
8 response is deemed necessary, Defendant admits Plaintiff filed a request for exemption from  
9 arbitration. This request speaks for itself and is the best evidence as to its contents. To the extent  
10 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
11 in this paragraph.

12 25. Answering Paragraph 25 of Plaintiff’s Complaint, Defendant admits it was served  
13 with a copy of the exemption request. Defendant admits it did not file an opposition. Defendant  
14 denies Plaintiff’s insinuation that it’s decision not to file an exemption implies Defendant does not  
15 oppose the amount of medical costs asserted. Defendant denies all remaining averments in this  
16 paragraph.

17 26. Answering Paragraph 26 of Plaintiff’s Complaint, Defendant admits the averments  
18 in this paragraph.

19 27. Answering Paragraph 27 of Plaintiff’s Complaint, Defendant submits that the  
20 referenced documents speaks for itself and is the best evidence as to its contents. To the extent  
21 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
22 in this paragraph.

23 28. Answering Paragraph 28 of Plaintiff’s Complaint, Defendant submits that the  
24 referenced documents speaks for itself and is the best evidence as to its contents. To the extent  
25 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
26 in this paragraph.

27 29. Answering Paragraph 29 of Plaintiff’s Complaint, Defendant submits that the  
28 averments in this paragraph violate FRCP 8 and thus do not require a response. To the extent a

1 response is deemed necessary, Defendant submits that the referenced document speaks for itself  
2 and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or  
3 otherwise change its contents, Defendant denies the averments in this paragraph and denies any  
4 entitlement to benefits as legal entitlement has not been established by Plaintiff.

5 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendant admits it continued its  
6 efforts to conduct a complete and thorough evaluation of Plaintiff's claim and therefore admits the  
7 averments in this paragraph.

8 31. Answering Paragraph 31 of Plaintiff's Complaint, admits the parties filed a written  
9 stipulation. The stipulation speaks for itself and is the best evidence as to its contents. To the  
10 extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the  
11 averments in this paragraph.

12 32. Answering Paragraph 32 of Plaintiff's Complaint, admits the parties filed a written  
13 stipulation. The stipulation speaks for itself and is the best evidence as to its contents. To the  
14 extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the  
15 averments in this paragraph.

16 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant admits Plaintiff filed  
17 an Amended Complaint. Defendant admits Defendant was served with a copy of the Amended  
18 Complaint. The Amended Complaint speaks for itself and is the best evidence as to its contents.  
19 To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies  
20 the averments in this paragraph. Defendant submits that Plaintiff's assertion that counsel for  
21 ACUITY "accepted" the Amended Complaint is vague, ambiguous, subjective in nature, and  
22 subject to multiple interpretations. As such, Defendant is without knowledge as to this specific  
23 averment.

24 34. Answering Paragraph 34 of Plaintiff's Complaint Defendant admits it filed an Answer  
25 to the Amended Complaint. The Answer speaks for itself and is the best evidence as to its contents.  
26 To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies  
27 the averments in this paragraph.

28 35. Answering Paragraph 35 of Plaintiff's Complaint Defendant admits it continued its

1 efforts to conduct a complete and thorough evaluation of Plaintiff's claim and denies any  
2 entitlement to benefits as legal entitlement has not been established by Plaintiff.

3 36. Answering Paragraph 36 of Plaintiff's Complaint Defendant submits that the averments  
4 in this paragraph violate FRCP 8 and therefore do not require a response. To the extent a response  
5 is deemed necessary, Defendant admits Plaintiff filed his First Supplemental FRCP 26 disclosure.  
6 This document speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
7 seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this  
8 paragraph. Further, Defendant admits its was served with a copy of the disclosure. Defendant  
9 denies all remaining averments in this paragraph.

10 37. Answering Paragraph 37 of Plaintiff's Complaint Defendant admits the parties filed  
11 another written stipulation. The stipulation speaks for itself and is the best evidence as to its  
12 contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant  
13 denies the averments in this paragraph.

14 38. Answering Paragraph 38 of Plaintiff's Complaint Defendant admits the parties filed  
15 another written stipulation. The stipulation speaks for itself and is the best evidence as to its  
16 contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant  
17 denies the averments in this paragraph.

18 39. Answering Paragraph 39 of Plaintiff's Complaint Defendant admits the averments in  
19 this paragraph.

20 40. Answering Paragraph 40 of Plaintiff's Complaint, Defendant admits the parties  
21 entered into another written stipulation. This stipulation speaks for itself and is the best evidence  
22 as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents,  
23 Defendant denies the averments in this paragraph and further denies any entitlement to benefits as  
24 legal entitlement has not been established by Plaintiff.

25 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendant submits that the  
26 averments in this paragraph are argumentative, stating legal conclusions rather than facts. For this  
27 reason, Defendant admits the deposition was held, and admits Defendant's counsel participated in  
28 the deposition, but denies the remaining averments in this paragraph and denies the scope of the

1 deposition involved the causes of action in this case, which were not pled in the other action.

2 42. Answering Paragraph 42 of Plaintiff's Complaint, Defendant admits Mr. Kides was  
3 present at Plaintiff's deposition. Defendant submits that it has no obligation to admit or deny  
4 attorney client privileged and or work product protected information as asserted "upon information  
5 and belief" by Plaintiff and therefore will not respond to the averments regarding same. Defendant  
6 denies the remaining averments in this paragraph pertaining to officers, directors, or departments  
7 heads of ACUITY.

8 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendant admits the averments  
9 in this paragraph.

10 44. Answering Paragraph 44 of Plaintiff's Complaint, Defendant admits it filed its Second  
11 Supplemental FRCP 26 discovery disclosure. This disclosure speaks for itself and is the best  
12 evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its  
13 contents, Defendant denies the averments in this paragraph.

14 45. Answering Paragraph 45 of Plaintiff's Complaint, Defendant admits the averments  
15 in this paragraph.

16 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendant submits that the  
17 averments in this paragraph are argumentative, stating legal conclusions rather than facts. For this  
18 reason, Defendant admits it did not serve written discovery on Plaintiff but denies breaching any  
19 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute and further  
20 denies causing Plaintiff to incur any damages whatsoever.

21 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendant submits that the  
22 averments in this paragraph are argumentative, speculative, and state legal conclusions rather than  
23 facts. Further, Defendant submits that it has no obligation to admit or deny attorney client  
24 privileged and or work product protected information as asserted by Plaintiff and therefore will not  
25 respond to the averments regarding same. Defendant denies the scope of the discovery involved  
26 the causes of action in this case, which were not pled in the other action. Defendant denies  
27 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute  
28 and further denies causing Plaintiff to incur any damages whatsoever.



1           48. Answering Paragraph 48 of Plaintiff's Complaint Defendant admits the parties filed  
2 another written stipulation. The stipulation speaks for itself and is the best evidence as to its  
3 contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant  
4 denies the averments in this paragraph.

5           49. Answering Paragraph 49 of Plaintiff's Complaint, Defendant admits counsel for  
6 ACUITY participated in Alvarado Medel's deposition. Defendant submits that it has no obligation  
7 to admit or deny attorney client privileged and or work product protected information as asserted  
8 "upon information and belief" by Plaintiff and therefore will not respond to the averments  
9 regarding same. Defendant denies the remaining averments in this paragraph pertaining to officers,  
10 directors, or departments heads of ACUITY.

11           50. Answering Paragraph 50 of Plaintiff's Complaint, Defendant admits counsel for  
12 ACUITY participated in R&R Express Inc.'s deposition. Defendant submits that it has no  
13 obligation to admit or deny attorney client privileged and or work product protected information  
14 as asserted "upon information and belief" by Plaintiff and therefore will not respond to the  
15 averments regarding same. Defendant denies the scope of the discovery involved the causes of  
16 action in this case, which were not pled in the other action. Defendant denies the remaining  
17 averments in this paragraph pertaining to officers, directors, or departments heads of ACUITY.

18           51. Answering Paragraph 51 of Plaintiff's Complaint, Defendant admits it filed its Third  
19 Supplemental FRCP 26 discovery disclosure. The disclosure speaks for itself and is the best  
20 evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its  
21 contents, Defendant denies the averments in this paragraph.

22           52. Answering Paragraph 52 of Plaintiff's Complaint, Defendant submits that the  
23 averments in this paragraph violate NRCP 8 and therefore do not require a response. To the extent  
24 a response is deemed necessary, Defendant admits Plaintiff sent the demand. The demand speaks  
25 for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify,  
26 or otherwise change its contents, Defendant denies the averments in this paragraph.

27           53. Answering Paragraph 53 of Plaintiff's Complaint, Defendant submits that the  
28 averments in this paragraph violate NRCP 8 and therefore do not require a response. To the extent

1 a response is deemed necessary, Defendant admits Plaintiff sent the demand. The demand speaks  
2 for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify,  
3 or otherwise change its contents, Defendant denies the averments in this paragraph.

4 54. Answering Paragraph 54 of Plaintiff's Complaint, Defendant submits that the  
5 averments in this paragraph violate NRC 8 and therefore do not require a response. To the extent  
6 a response is deemed necessary, Defendant admits Plaintiff filed an offer of judgment. Said offer  
7 of judgment speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
8 seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this  
9 paragraph. Defendant further submits that it has no obligation to admit or deny attorney client  
10 privileged and or work product protected information as asserted "upon information and belief" by  
11 Plaintiff and therefore will not respond to the averments regarding same. Defendant denies the  
12 remaining averments in this paragraph pertaining to officers, directors, or departments heads of  
13 ACUITY.

14 55. Answering Paragraph 55 of Plaintiff's Complaint, Defendant submits that it has no  
15 obligation to admit or deny attorney client privileged and or work product protected information  
16 as asserted "upon information and belief" by Plaintiff and therefore will not respond to the  
17 averments regarding same. Defendant further denies the involvement of officers, directors, or  
18 departments heads of ACUITY in investigating and evaluating Plaintiff's claim.

19 56. Answering Paragraph 56 of Plaintiff's Complaint, Defendant admits it sent a letter  
20 to Plaintiff on or about March 1, 2021. The letter speaks for itself and is the best evidence as to its  
21 contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant  
22 denies the averments in this paragraph.

23 57. Answering Paragraph 57 of Plaintiff's Complaint, Defendant admits Plaintiff sent a  
24 letter on or about March 5, 2021. The letter speaks for itself and is the best evidence as to its  
25 contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant  
26 denies the averments in this paragraph.

27 58. Answering Paragraph 58 of Plaintiff's Complaint, Defendant submits that it has no  
28 obligation to admit or deny attorney client privileged and or work product protected information

1 as asserted “upon information and belief” by Plaintiff and therefore will not respond to the  
2 averments regarding same. Defendant further denies the involvement of officers, directors, or  
3 departments heads of ACUITY in investigating and evaluating Plaintiff’s claim.

4 59. Answering Paragraph 59 of Plaintiff’s Complaint, Defendant admits the averments  
5 in this paragraph but denies breaching any obligation or duty owed to Plaintiff, whether created by  
6 contract, tort law, or statute, and further denies causing Plaintiff to incur any damages whatsoever.

7 60. Answering Paragraph 60 of Plaintiff’s Complaint, Defendant submits that the  
8 averments in this paragraph violate FRCP 8 and therefore do not require a response. To the extent  
9 a response is deemed necessary, Defendant admits Plaintiff filed his sixth supplemental FRCP 26  
10 discovery disclosure. The disclosure speaks for itself and is the best evidence as to its contents.  
11 To the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies  
12 the averments in this paragraph. Defendant admits it was served a copy of the disclosure.  
13 Defendant submits that it has no obligation to admit or deny attorney client privileged and or work  
14 product protected information as asserted “upon information and belief” by Plaintiff and therefore  
15 will not respond to the averments regarding same. Defendant further denies the involvement of  
16 officers, directors, or departments heads of ACUITY in investigating and evaluating Plaintiff’s  
17 claim.

18 61. Answering Paragraph 61 of Plaintiff’s Complaint, admits the averments in this  
19 paragraph.

20 62. Answering Paragraph 62 of Plaintiff’s Complaint, Defendant admits it requested  
21 authorizations from Plaintiff. Defendant submits that Plaintiff’s assertion that he “promptly”  
22 provided the authorizations is vague, ambiguous, subjective in nature, and subject to multiple  
23 interpretations. Therefore, Defendant is without knowledge as to this averment.

24 63. Answering Paragraph 63 of Plaintiff’s Complaint, Defendant admits Plaintiff sent a  
25 list of proposed topics for an FRCP 30(b)(6) deposition. The proposal speaks for itself and is the  
26 best evidence as to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change  
27 its contents, Defendant denies the averments in this paragraph.

28 64. Answering Paragraph 64 of Plaintiff’s Complaint, Defendant admits it responded to

1 Plaintiff's request. The response speaks for itself and is the best evidence as to its contents. To the  
2 extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the  
3 averments in this paragraph.

4 65. Answering Paragraph 65 of Plaintiff's Complaint, admits Plaintiff noticed the  
5 deposition of the FRCP 30(b)(6) witness. The notice speaks for itself and is the best evidence as  
6 to its contents. To the extent Plaintiff seeks to alter, modify, or otherwise change its contents,  
7 Defendant denies the averments in this paragraph.

8 66. Answering Paragraph 66 of Plaintiff's Complaint, Defendant submits that the  
9 averments in this paragraph are argumentative, stating legal conclusions rather than facts. For this  
10 reason, Defendant admits the deposition of Dr. Poindexter was set by Defendant, and admits it was  
11 set for June 18, 2021 as agreed by the parties, but denies the remaining averments in this paragraph.

12 67. Answering Paragraph 67 of Plaintiff's Complaint, Defendant admits it filed a Motion  
13 for Protective Order. The motion speaks for itself and is the best evidence as to its contents. To  
14 the extent Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the  
15 averments in this paragraph.

16 68. Answering Paragraph 68 of Plaintiff's Complaint, Defendant submits that the  
17 referenced motion speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
18 seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this  
19 paragraph.

20 69. Answering Paragraph 69 of Plaintiff's Complaint, Defendant admits the averments  
21 in this paragraph.

22 70. Answering Paragraph 70 of Plaintiff's Complaint, Defendant submits that the  
23 averments in this paragraph violate NRS 48.105 and thus require no response. To the extent a  
24 response is deemed necessary, Defendant admits it suggested the parties attend mediation.  
25 Defendant denies Plaintiff's aspersions that it acted in bad faith and failed to properly communicate  
26 with Plaintiff or that there exists a duty to mediate or offer to mediate.

27 71. Answering Paragraph 71 of Plaintiff's Complaint, Defendant admits it filed a motion  
28 to withdraw. The motion speaks for itself and is the best evidence as to its contents. To the extent

1 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
2 in this paragraph.

3 72. Answering Paragraph 72 of Plaintiff's Complaint, Defendant submits that the  
4 averments in this paragraph are argumentative, stating legal conclusions rather than facts. For this  
5 reason, and because Defendant's motion was granted, Defendant denies the averments in this  
6 paragraph.

7 73. Answering Paragraph 73 of Plaintiff's Complaint, the referenced transcript speaks  
8 for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to alter, modify,  
9 or otherwise change its contents, Defendant denies the averments in this paragraph.

10 74. Answering Paragraph 74 of Plaintiff's Complaint, Defendant denies the averments  
11 in this paragraph.

12 75. Answering Paragraph 75 of Plaintiff's Complaint, Defendant submits that the  
13 referenced transcript speaks for itself and is the best evidence as to its contents. To the extent  
14 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
15 in this paragraph.

16 76. Answering Paragraph 76 of Plaintiff's Complaint, Defendant submits that the  
17 averments in this paragraph violate NRS 48.105 and therefore do not require a response. To the  
18 extent a response is deemed necessary, Defendant submits that the averments in this paragraph are  
19 argumentative, stating legal conclusions rather than facts. For this reason, Defendant denies the  
20 averments in this paragraph.

21 77. Answering Paragraph 77 of Plaintiff's Complaint, Defendant submits that the  
22 referenced transcript speaks for itself and is the best evidence as to its contents. To the extent  
23 Plaintiff seeks to alter, modify, or otherwise change its contents, Defendant denies the averments  
24 in this paragraph. Further, Defendant specifically denies "admitting that ACUITY never advised  
25 Plaintiff of (sic) basis of that decision and again invited Plaintiff to file suit in order to resolve his  
26 claim and to learn ACUITY's evaluation and determination of his claim."

27 78. Answering Paragraph 78 of Plaintiff's Complaint, Defendant denies breaching any  
28 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute and further

denies causing Plaintiff to incur any damages whatsoever.

79. Answering Paragraph 79 of Plaintiff's Complaint, Defendant denies the averments in this paragraph.

80. Answering Paragraph 80 of Plaintiff's Complaint, Defendant admits that based on the known information to date it has determined that Plaintiff has been adequately compensated by the tortfeasor's in this matter. Defendant denies the remaining averments in this paragraph.

81. Answering Paragraph 81 of Plaintiff's Complaint, Defendant submits that Plaintiff's assertions regarding "substantial medical evidence" and "severe. . . injuries" are vague, ambiguous, subjective in nature, and subject to multiple interpretations. Therefore, Defendant is without knowledge as to the averments in this paragraph.

82. Answering Paragraph 82 of Plaintiff's Complaint, Defendant submits that the averments in this paragraph violate NRCP 8 and thus require no response. To the extent a response is deemed necessary, Defendant denies Plaintiff's intimation that Defendant has accepted or otherwise waived its right to contest Plaintiff's damages.

83. Answering Paragraph 83 of Plaintiff's Complaint, Defendant submits that the averments in this paragraph violate NRCP 8 and therefore do not require a response. To the extent a response is deemed necessary, Defendant denies the averments in this paragraph.

84. Answering Paragraph 84 of Plaintiff's Complaint, Defendant admits the parties conducted discovery as outlined in this paragraph. Defendant is without knowledge as to what "provided it timely" encompasses and is therefore without knowledge as to this averment. Defendant denies failing to respond to Plaintiff.

85. Answering Paragraph 85 of Plaintiff's Complaint, Defendant denies the averments in this paragraph.

86. Answering Paragraph 86 of Plaintiff's Complaint, Defendant denies the averments in this paragraph.

87. Answering Paragraph 87 of Plaintiff's Complaint, Defendant denies the averments in this paragraph.

88. Answering Paragraph 88 of Plaintiff's Complaint, Defendant denies the averments

1 in this paragraph.

2 89. Answering Paragraph 89 of Plaintiff's Complaint, Defendant denies the averments  
3 in this paragraph.

4 90. Answering Paragraph 90 of Plaintiff's Complaint, Defendant denies the averments  
5 in this paragraph.

6 91. Answering Paragraph 91 of Plaintiff's Complaint, Defendant denies the averments  
7 in this paragraph.

8 92. Answering Paragraph 92 of Plaintiff's Complaint, Defendant denies the averments  
9 in this paragraph.

10 93. Answering Paragraph 93 of Plaintiff's Complaint, Defendant denies the averments  
11 in this paragraph.

12 94. Answering Paragraph 94 of Plaintiff's Complaint, Defendant denies the averments  
13 in this paragraph.

14 95. Answering Paragraph 95 of Plaintiff's Complaint, Defendant denies breaching any  
15 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
16 denies causing Plaintiff to incur any damages whatsoever.

17 96. Answering Paragraph 96 of Plaintiff's Complaint, Defendant denies breaching any  
18 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
19 denies causing Plaintiff to incur any damages whatsoever.

20 **FIRST CAUSE OF ACTION**

21 **(Breach of Contract)**

22 97. Answering Paragraph 97 of Plaintiff's Complaint, Defendant repeats and realleges  
23 its answers to Paragraphs 1 through 96, inclusive, of Plaintiff's Complaint, as if fully set forth, and  
24 incorporates them herein by reference.

25 98. Answering Paragraph 98 of Plaintiff's Complaint, Defendant submits that Plaintiff's  
26 assertion regarding injuries and damages is vague, ambiguous, subjective in nature, and subject to  
27 multiple interpretations. Defendant is therefore without knowledge as to this averments. Further,  
28 Defendant is without knowledge regarding the facts of the accident, except for those contained in

1 the traffic accident report and as relayed by Plaintiff and witnesses, obtained by Defendant during  
2 the course of its investigation. Defendant denies the vehicle operator was underinsured.

3 99. Answering Paragraph 99 of Plaintiff's Complaint, Defendant admits the policy was  
4 in effect at the time of the loss. Defendant denies Plaintiff is entitled to benefits pursuant to the  
5 terms of the policy.

6 100. Answering Paragraph 100 of Plaintiff's Complaint, Defendant that the referenced  
7 policy speaks for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to  
8 alter, modify, or otherwise change its terms, conditions or exclusions, Defendant denies the  
9 averments in this paragraph.

10 101. Answering Paragraph 101 of Plaintiff's Complaint, Defendant submits that the  
11 policy speaks for itself and is the best evidence as to its contents. To the extent Plaintiff seeks to  
12 alter, modify, or otherwise change its terms, conditions, or exclusions, Defendant denies the  
13 averments in this paragraph.

14 102. Answering Paragraph 102 of Plaintiff's Complaint, Defendant submits that  
15 Plaintiff's assertion regarding injuries and damages is vague, ambiguous, subjective in nature, and  
16 subject to multiple interpretations. Defendant is therefore without knowledge as to this averments.  
17 Further, Defendant is without knowledge regarding the facts of the accident, except for those  
18 contained in the traffic accident report and as relayed by Plaintiff and witnesses, obtained by  
19 Defendant during the course of its investigation. Defendant denies the negligent party maintained  
20 insufficient liability insurance to fully compensate Plaintiff and thus denies Plaintiff is entitled to  
21 recover UIM benefits pursuant to the terms of the policy.

22 103. Answering Paragraph 103 of Plaintiff's Complaint Defendant admits a bilateral duty  
23 of good faith and fair dealing exists between the parties. Defendant denies failing to satisfy that  
24 duty.

25 104. Answering Paragraph 104 of Plaintiff's Complaint Defendant denies breaching any  
26 obligation or duty owed to Plaintiff, whether created by contract, tort law or statute, and further  
27 denies causing Plaintiff to incur any damages whatsoever.

28 105. Answering Paragraph 105 of Plaintiff's Complaint Defendant denies breaching any



1 obligation or duty owed to Plaintiff, whether created by contract, tort law or statute, and further  
2 denies causing Plaintiff to incur any damages whatsoever.

3 106. Answering Paragraph 106 of Plaintiff's Complaint Defendant denies breaching any  
4 obligation or duty owed to Plaintiff, whether created by contract, tort law or statute, and further  
5 denies causing Plaintiff to incur any damages whatsoever.

6 107. Answering Paragraph 107 of Plaintiff's Complaint, Defendant denies the averments  
7 in this paragraph.

8 108. Answering Paragraph 108 of Plaintiff's Complaint, Defendant denies the averments  
9 in this paragraph.

10 **SECOND CAUSE OF ACTION**

11 **(Unfair Insurance Practices)**

12 109. Answering Paragraph 109 of Plaintiff's Complaint Defendant repeats and realleges  
13 its answers to Paragraphs 1 through 108, inclusive, of Plaintiff's Complaint, as if fully set forth, and  
14 incorporates them herein by reference.

15 110. Answering Paragraph 110 of Plaintiff's Complaint Defendant denies the averments  
16 in this paragraph.

17 111. Answering Paragraph 111 of Plaintiff's Complaint, Defendant denies the averments  
18 in this paragraph.

19 112. Answering Paragraph 112 of Plaintiff's Complaint, Defendant submits the  
20 referenced statute speaks for itself and is the best evidence as to its contents. To the extent Plaintiff  
21 seeks to alter, modify, or otherwise change its contents, Defendant denies the averments in this  
22 paragraph.

23 113. Answering Paragraph 113 of Plaintiff's Complaint, Defendant denies the averments  
24 in this paragraph.

25 114. Answering Paragraph 114 of Plaintiff's Complaint, Defendant denies breaching any  
26 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
27 denies causing Plaintiff to incur any damages whatsoever. Defendant further denies an officer,  
28 director or department head was involved in the investigation and evaluation of Plaintiff's claim.

1           115. Answering Paragraph 115 of Plaintiff's Complaint, Defendant denies breaching any  
2 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
3 denies causing Plaintiff to incur any damages whatsoever.

4           116. Answering Paragraph 116 of Plaintiff's Complaint, Defendant denies breaching any  
5 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
6 denies causing Plaintiff to incur any damages whatsoever.

7           117. Answering Paragraph 117 of Plaintiff's Complaint, Defendant denies the averments  
8 in this paragraph.

9                                   **THIRD CAUSE OF ACTION**

10           **(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing ("Bad Faith"))**

11           118. Answering Paragraph 118 of Plaintiff's Complaint, Defendant repeats and realleges  
12 its answers to Paragraphs 1 through 117, inclusive, of Plaintiff's Complaint, as if fully set forth, and  
13 incorporates them herein by reference.

14           119. Answering Paragraph 119 of Plaintiff's Complaint, Defendant admits the averments  
15 in this paragraph.

16           120. Answering Paragraph 120 of Plaintiff's Complaint, Defendant admits that both  
17 Plaintiff and Defendant owe each other a duty of good faith and fair dealing during the time the  
18 policy is in effect.

19           121. Answering Paragraph 121 of Plaintiff's Complaint, Defendant is without knowledge  
20 as to the averments in this paragraph.

21           122. Answering Paragraph 122 of Plaintiff's Complaint, Defendant denies the averments  
22 in this paragraph.

23           123. Answering Paragraph 123 of Plaintiff's Complaint, Defendant denies the averments  
24 in this paragraph.

25           124. Answering Paragraph 124 of Plaintiff's Complaint, Defendant denies the averments  
26 in this paragraph.

27           125. Answering Paragraph 125 of Plaintiff's Complaint, Defendant denies the averments  
28 in this paragraph.

1           126. Answering Paragraph 126 of Plaintiff's Complaint, Defendant denies the averments  
2 in this paragraph.

3           127. Answering Paragraph 127 of Plaintiff's Complaint, Defendant denies the averments  
4 in this paragraph.

5           128. Answering Paragraph 128 of Plaintiff's Complaint, Defendant denies the averments  
6 in this paragraph.

7           129. Answering Paragraph 129 of Plaintiff's Complaint, Defendant denies the averments  
8 in this paragraph.

9           130. Answering Paragraph 130 of Plaintiff's Complaint, Defendant denies breaching any  
10 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
11 denies causing Plaintiff to incur any damages whatsoever.

12           131. Answering Paragraph 131 of Plaintiff's Complaint, Defendant denies breaching any  
13 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further  
14 denies causing Plaintiff to incur any damages whatsoever.

15           132. Answering Paragraph 132 of Plaintiff's Complaint, Defendant denies the averments  
16 in this paragraph.

17                           **AFFIRMATIVE DEFENSES**

18                           First Affirmative Defense

19           Plaintiff has failed to state a claim upon which relief can be granted.

20                           Second Affirmative Defense

21           The acts or omissions of third parties, including one or several tortfeasors, may have  
22 proximately caused or otherwise contributed to the losses alleged by Plaintiff.

23                           Third Affirmative Defense

24           The negligence of Plaintiff contributed to any injuries that he may have sustained and the  
25 legal concept of comparative fault must be assessed to the detriment of Plaintiff.

26                           Fourth Affirmative Defense

27           The Plaintiff has failed to make a reasonable good faith effort to mitigate his damages, if any.  
28

1 Fifth Affirmative Defense

2 To the extent that any contract between these parties is supported by adequate consideration,  
3 Plaintiff has failed to fulfill and perform her obligations and duties to Defendant under the contract  
4 and is therefore barred from enforcing the same against it.

5 Sixth Affirmative Defense

6 The NRS 42.005 exclusion of insurance companies from treble limits is unconstitutional and  
7 in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States  
8 Constitution as well as the Due Process Clause of the Fourteenth Amendment of the United States  
9 Constitution

10 Seventh Affirmative Defense

11 The damages sustained by Plaintiff, if any, were caused by the acts of unknown third persons  
12 who were not agent, servants, or employees of Defendant and who were not acting on behalf of  
13 Defendant in any manner or form and, as such, Defendant is not liable in any manner to the Plaintiff.

14 Eighth Affirmative Defense

15 The allegations alleged in the Complaint, and the resulting damage if any, to Plaintiff, were  
16 proximately caused or contributed to by Plaintiff's own negligence, and such negligence may have  
17 been greater than the negligence, if any, of Defendant.

18 Ninth Affirmative Defense

19 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been  
20 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of  
21 this Answer, and therefore, Defendant reserves the right to amend this Answer to allege additional  
22 affirmative defenses as subsequent investigation warrants.

23 Tenth Affirmative Defense

24 Plaintiff lacks legal entitlement to assert a bad faith claim as contemplated by the Nevada  
25 Supreme Court in *Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, 8 P.2d 380 (1993).

26 Eleventh Affirmative Defense

27 Nevada's punitive damages statutes violate the Fourteenth Amendment of the United States  
28 Constitution, including the Due Process clause and Equal Protection clause, to the extent such statutes

1 provide for unlimited recovery pursuant to the findings of State Farm Mutual Automobile Insurance  
2 Co. v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed. 2d 585 (2003). Further, the Nevada  
3 punitive damages statutes are unconstitutional as they are vague and ambiguous, and therefore  
4 enforcement under same is contrary to the Nevada State Constitution and the United States  
5 Constitution.

6 Twelfth Affirmative Defense

7 Plaintiff's causes of action, as outlined in his Complaint, are barred by the applicable statute  
8 of limitations.

9 Thirteenth Affirmative Defense

10 Defendant has a genuine dispute with Plaintiff as to the amount of Plaintiff's claim See Wilson  
11 v. 21<sup>st</sup> Century Ins. Co., 42 Cal. 4<sup>th</sup> 713, 723, 68 Cal. Rptr. 3d 746, 754, 171 P.3d 1082, 1088-1089  
12 (2007).

13 DATED this 14<sup>th</sup> day of March, 2022.

14 THE FELDMAN FIRM

15 By /s/ David Feldman  
16 David J. Feldman, Esq.  
Nevada Bar No. 5947  
17 Rachel J. Holzer, Esq.  
Nevada Bar No. 11604  
18 8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
19 Telephone: (702) 949-5096  
Facsimile: (702) 949-5097  
20 dfeldman@feldmanattorneys.com  
rholler@feldmanattorneys.com  
21 *Attorneys for Defendants*  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am employee of The Feldman Firm, and on this 14th day of March, 2022, I served a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO COMPLAINT** on all parties in this action set forth below by Electronic Mail through the United States District Court's CM/ECF Filing System:

STEVEN T. JAFFE, ESQ.

[sjaffe@lawhjc.com](mailto:sjaffe@lawhjc.com)

TAYLOR R. ANDERSON, ESQ.

[tanderson@lawhjc.com](mailto:tanderson@lawhjc.com)

HALL JAFFE&CLAYTON, LLP

7425 Peak Drive

Las Vegas, Nevada 89128

Phone: (702) 316-4111

Facsimile: (702) 316-4114

and

JOHN P. SHANNON, ESQ.

[John@jpshannonlaw.com](mailto:John@jpshannonlaw.com)

JASON S. COOK, ESQ.

[jason@williamshannonlaw.com](mailto:jason@williamshannonlaw.com)

LAW OFFICE OF WILLIAM H. JACKSON, LLC

3320 N. Buffalo Drive, Ste. 202

Las Vegas, Nevada 89129

Phone: (702) 489-3030

Facsimile: (702) 489-3033

Attorneys for Plaintiff

/s/ Heather Miller

An Employee of THE FELDMAN FIRM